IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1118 OF 1987

WITH

CROSS OBJECTIONS

Seth Industries Pvt. Ltd. ..Appellants

versus

Uttam Jayantilal Jhaveri & Ors. ..Respondents

Mr. M. N. Jadhav with Madhukar Haramvar for the Appellants.

Ms. A. B. Kapadia i/b. M/s. D. F. & Diwan, for the Respondents No. 1, 3, 4, 5 and 6.

CORAM : D. G. DESHPANDE,J.

DATE : 15TH JUNE,2005

ORAL ORDER :

1. Matter arises out of an Award of the MACT, Mumbai. Claim petition came to be filed by Uttam Jyantilal Jhaveri and five others against Seth Industries Pvt. Ltd. as Opponent No.1 and Anuradha S. Seth as Opponent No.2 and the New India Assurance Co. ltd. as Insurer. The Tribunal

directed the Opponent Nos. 1 and 2 to pay Rs.1,38,282/- jointly and severally with corresponding costs and interest at the rate of 12% per annum. The Insurance Company was discharged. It is against this order that the First Appeal is filed by the owners of the vehicle i.e. Seth Industries Pvt. Ltd. and Anuradha D. Seth, and, Cross Objection is filed by the Respondent No.1 to 6 to the First Appeal. The Cross Objection is obviously for enhancement of the amount of the compensation.

2. The main grievance of the appellants - owners of the vehicle is that Insurance Company was improperly and illegally exonerated by the Tribunal, and, therefore, I am only considering that aspect of the matter, so far as First Appeal is concerned.

3. The accident occurred on 11.9.1977, the deceased Jayantilal Shyamdas Jhaveri had parked his car on the left side i.e. Opposite Joshi Palace, Walkeshwar Road, Mumbai. He left some articles in the Compound No. 22, Walkeshwar Road, and crossed the Walkeshwar Road to return to his car, when Appellant No.2 who was driving the Motor Car No. MRD-3713 on Walkeshwar Road, at about 1.30 noon and was proceeding from Chowpatty to Teen Batti, came in a fast speed causing him several multiple injuries.

This came to be opposed by the appellant No.2 contending that she was proceeding at a moderate speed and on the correct side of the road from Chowpatty towards Teen Batti. She found one elderly person suddenly crossing the road, she sounded the horn but the person got confused and instead of stopping he hurriedly tried to cross the road, she therefore applied the brakes but elderly person came into contact with the front portion of the motor car and fell on the bonnet and then on the road. She also contended that one Hanumanta who had pukka licence was sitting by her side, there was "L" plate exhibited on the car and therefore according to the appellants they were not at all responsible. Insurance Company contended that Anuradha Seth - Appellant No.2 who was driving the car was not having valid licence being a minor, and, car was driven in breach of the condition of the policy, therefore, they were not liable to pay compensation.

4. So far as stand of the Insurance company is concerned, the record falsify the stand because the appellant No.2 was having a learning licence, by her side Hanumanta having a pukka licence and / or permanent licence was sitting, therefore, the Tribunal was not at all justified in exonerating the Insurance Company.

5. The Tribunal in paragraph 39 of the judgment has referred to the duplicate copy of the Insurance Policy at Exhibit ’48’, where the word "driver" is defined as a person holding a valid driving licence. The appellant No.2 was holding a valid licence, though it was a learning licence, she was accompanied by person who was holding a permanent licence or pukka licence, therefore entire judgment so far as it relates to exonerating the Insurance Company, is wrong. Therefore, the appeal has to be allowed.

6. So far as Cross Objection is concerned, it is for enhancement of compensation. Claimants had claimed Rs.4 lacs. The Tribunal had awarded Rs.1,38,282/-. The age of the deceased at the time of the accident was 65 years as per the post mortem report. The earning of the deceased at the time of death i.e. prior to death i.e. in the year 1977-78 was considered by the Tribunal at Rs.40,550/- per year. The Tribunal, however, calculated Rs.3,000/- per month as earning, then taking the age of the deceased at 60 years calculations were made for 5 years and that comes to Rs.1,20,000/-, Rs.10,000/- were awarded for consortium and Rs.5,000/- for loss of expectation of life and expenses incurred was calculated at Rs.3,282/- and therefore the compensation was awarded in this matter. I do not

find any error on the part of the Tribunal in awarding compensation. This aspect is fully considered at length while considering Issue No. 6, paragraph 32 onwards. In fact claimants contend that the age is 60 years whereas post mortem report shows that it is 65 years. The post mortem report in such circumstances is more accurate leaving a margin of 2 years on either side, so the age comes to 63 years. Even then compensation is calculated for five years i.e. Rs.2,000/- per month for five years, it comes to Rs.1,20,000/-, it is proper and correct calculation made by the Tribunal. No further enhancement is required. Therefore, I pass the following order :

ORDER

. First Appeal is allowed. Respondent No. 7 Insurance Company will be liable to pay the amount of the Award. No order as to costs.

. Cross objection is dismissed.

15.6.2005 (D.G. DESHPANDE, J.)